S.B. Civil First Appeal No.532/2005
Sunil Kumar Vs. Oriental Bank of Commerce

22nd November, 2005

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. Rajendra Charan for appellant.
Mr. J.L. Purohit for respondent Bank.

Heard learned counsel for the parties.

Learned counsel for the appellant has submitted that he does not want to contest the appeal on merit but only prays that he may be permitted to pay the decretal amount in instalments. He has further submitted that the appellant is unable to make payment of the decretal amount in lumpsum even after best efforts, however, he would be able to pay off the decretal amount in instalments.

The learned counsel for the respondent on the other hand has submitted that the decree was passed by the learned trial Court on 31.05.2005 and despite about 6 months having

passed the appellant has not made the payment, which shows that the appellant is not willing to make the payment. He has also submitted that in case the Court considers it proper to pass orders for payment of decretal amount in instalments then the orders may be passed with the condition that if the appellant fails in making payment of three consecutive instalments then the respondent shall be at liberty to recover the entire amount as per law.

It appears, that Suit under Order 37 was filed against the appellant by respondent Bank for recovery of dues on account of loan granted to the appellant under the Prime Minister's Employment Scheme for installation of a floor mill. The loan appears to have been granted for an amount of Rs.84,000/- in the year 2002, however, the appellant could not make repayment of the loan amount in time, therefore the bank had to file the suit and same was decreed on 31.05.2005.

In such a matter like the present one, this Court while deciding S.B. Civil First Appeal No. 478/2004 – Rameshwarlal Vs. Smt. Premlata has passed an order on 23.09.2004 of instalments for the decretal amount by taking help of the provisions of Sec.89 of the Code of Civil Procedure.

It appears that by putting the matter before Lok-Adalat or even taking recourse to Arbitration and Conciliation proceedings, much time will elapse and it will delay the matter and therefore, in the facts and circumstances of the present case, looking to the fact that the appellant is a poor person who has not been able to pay the amount in lumpsum, I consider it reasonable and appropriate to direct the appellant to pay a sum of Rs.15,000/- as first instalment and further pay Rs.5,000/- per month against decretal amount without any waiver of interest to him.

In view of above, while affirming the money decree passed by the trial Court it is modified to the extent that the decretal amount shall be paid in monthly instalments of Rs.5,000/- payable on 15th day of each calendar month from 1st January 2006 till the entire amount is deposited in the Court by the appellant with interest as awarded by judgment and decree dated 31.05.2005 with further stipulation that the first instalment payable by 15th Jan.2006 will be of Rs.15,000/- and in case the appellant fails in making payment of instalments consecutively for three months, the respondent Bank shall be at liberty to execute the decree.

As the matter has been settled under Sec.89 of CPC, on request being made by the learned counsel for the appellant, it is ordered that court fees paid by the appellant be refunded to him through his advocate, who after obtaining court fees shall furnish receipt of the court fees amount after getting

it from appellant in the Court within a period of 15 days from the date of actual receipt of the payment. A certificate for refund of the Court fees be issued.

Resultantly, the appeal is partly allowed and decree for payment of decretal amount in instalments is passed. There shall be no order as to costs.

(SATYA PRAKASH PATHAK),J.